

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
) File No.: EB-11-HU-0024
Aleluya Christian Broadcasting, Inc.)
) NAL/Acct. No.: 201232540001
Licensee of Station KBRZ)
Missouri City, Texas) FRN: 0005014428
Facility ID # 12156)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: October 25, 2011

Released: October 25, 2011

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that Aleluya Christian Broadcasting, Inc. (“ACB”), licensee of Station KBRZ, in Missouri City, Texas, apparently willfully and repeatedly violated section 73.1745(a) of the Commission’s rules (“Rules”)¹ by failing to operate within authorized power limitations. We conclude that ACB is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000). In addition, no later than 30 days from the date of this *NAL*, ACB must submit a statement signed under penalty of perjury that it is operating its station at night at authorized power levels.

II. BACKGROUND

2. Station KBRZ is authorized to operate under a Special Temporary Authorization (“STA”) on 1460 KHz with 3200 watts during the day and with 100 watts at night.² On July 7 and 11, 2011, in response to a complaint of overpower nighttime operations, an agent from the Enforcement Bureau’s Houston Office (“Houston Office”) monitored the field strength of Station KBRZ’s transmissions before and after sunset. On both days, the agent observed no noticeable change in field strength. On July 18, 2011, an agent from the Houston Office observed that the field strength measurements taken at night on July 7 and 11, 2011 were approximately the same value as the field strength measurements of Station KBRZ’s transmissions taken during the day when it was operating at a full daytime power of 3200 watts, thereby confirming Station’s KBRZ’s overpower operations at night.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ provides that any

¹ 47 C.F.R. § 73.1745(a).

² See Letter from Charles N. Miller, Engineer, Audio Division, Media Bureau, to Lauren Lynch Flick, Esq., Pillsbury Winthrop Shaw Pittman LLP, dated May 20, 2011. Station KBRZ’s license lists 7:30 P.M. local standard time (8:30 P.M. C.D.T) as the average time of sunset for July. See License File No. BL-20080409ADR.

³ 47 U.S.C. § 503(b).

person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁴ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act⁵ and the Commission has so interpreted the term in the section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

4. Section 73.1745(a) of the Rules requires that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license.⁹ Station KBRZ is authorized to operate with 3200 watts during the day and with 100 watts at night. On July 7 and 11, 2011, an agent from the Houston Office observed Station KBRZ operating with its daytime power of 3200 watts after sunset. Based on the evidence before us, we find that ACB apparently willfully and repeatedly violated section 73.1745(a) of the Rules by failing to operate within authorized power limitations.

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000.¹⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that ACB is apparently liable for a total forfeiture of \$4,000, for operating overpower at night.

6. We direct ACB to submit a statement signed under penalty of perjury by an officer or

⁴ 47 U.S.C. § 312(f)(1).

⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁷ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁸ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*

⁹ 47 C.F.R. § 73.1745(a).

¹⁰ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 503(b)(2)(E).

director of ACB stating that Station KBRZ is decreasing power after sunset as specified in its station authorization. This statement must be provided to the Houston Office at the address listed in paragraph 11 within thirty days of the release date of this *NAL*.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Aleluya Christian Broadcasting, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of sections 73.1745(a) of the Rules.¹²

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Aleluya Christian Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Aleluya Christian Broadcasting, Inc. **SHALL SUBMIT** a statement as described in paragraph 6, *supra*, to the Houston Office within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: . If payment is made, Aleluya Christian Broadcasting Inc. will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas, 77065 and include the NAL/Acct. No. referenced in the caption. Aleluya Christian Broadcasting, Inc. also shall email the written response to SCR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3)

¹² 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1745(a).

⁸ See 47 C.F.R. § 1.1914.

some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Aleluya Christian Broadcasting, Inc. at 912 Curtis Avenue, Houston, Texas 77502.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau